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ABSTRACT

This bibliography focuses on the origins and development of the United States Constitution. This single bibliography is organized into two versions: (1) The Abbreviated Bibliography provides a long catalog of some major sources for a basic understanding of the events and ideas of the writing and ratification of the Constitution; and (2) the Extended Bibliography presents a more extensive list of works arranged into topical sections. The sections are (1) "The American Constitution: Bibliographies and General Treatments," (2) "Original Text and Writings," (3) "What Happended in 1787 and in the Years Before and After, and Why?" (4) "What Kind of People Wrote, Ratified, or Opposed the Constitution?," (5) "The Ideas of the Constitution," (6) "Specialized Treatments of Structural Components," (7) "Civil Rights and Civil Liberties," (8) "Other Provisions," (9) "Calls for Revisions in or Alternatives to the Constitution," and (10) "Nineteenth and Twentieth Century Constitutional History." The bibliography concludes with a chronology of the Founding Period. WL)

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THE WRITING AND RATIFICATION OF THE U.S. CONSTITUTION: A BIBLIOGRAPHY

By Russell R. Wheeler
Federal Judicial Center

1986

This bibliography was produced in furtherance of the Center's statutory mission to develop and conduct programs of continuing education and training for personnel of the federal judicial system. The selection and presentation of materials reflect the judgment of the author. Publication by the Center signifies that this work is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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INTRODUCTION

Organization. This is a single bibliography in two versions for two purposes. The Abbreviated Bibliography (pp. 1-3) provides a brief catalog of some major sources that a reader might consult to gain a basic understanding of the events and ideas of the Constitution's writing and ratification. The Extended Bibliography presents a more extensive list of works, arranged according to the topical sections shown in the Table of Contents.

Purpose and scope. This bibliography was prepared at the suggestion of the Board of the Federal Judicial Center, which recognized that federal judges, and other federal court personnel, would likely be called upon for various kinds of advice and participation in the bicentennial celebration of the American Constitution and that a bibliography would be helpful to that end. Consequently, this is not a bibliography on American constitutional law, cataloging materials that judges typically encounter in pleadings, briefs, and decisional law in constitutional cases. Nor is it a bibliography on American constitutional history or on the role of the Supreme Court in the American political process, although sections I and X of the Extended Bibliography contain some materials on those broader topics.

This bibliography's focus is on the events and ideas of two hundred years ago. That focus does not reflect the narrow view that all the important questions were settled in 1776 and 1787, but rather the view that the events and arguments of the period of the American founding provide important lessons that tend to be overlooked, and that the bicentennial provides a valuable opportunity to look specially at them. Indeed, it is an opportunity to take up the question posed in The Federalist no. 1:

> whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

Information on bicentennial activities and developments. Anyone interested in the Constitution's creation--be that interest sparked by the bicentennial or not--will want to stay abreast of the events and publications marking the event. The newsletter of the Commission on the Bicentennial of the United States Constitution is sent to all federal judges, but those not receiving it may do so by writing:

Commission on the Bicentennial
of the United States Constitution
736 Jackson Place, N.W.
Washington, DC 20503

In addition, this Constitution, a quarterly bicentennial chronicle of Project '87, publishes articles on the Constitution's creation and evolution and news items on related current events, as well as chronologies, documents, and other materials. There is a nominal subscription price. To subscribe, write to:

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ABBREVIATED BIBLIOGRAPHY

The Philadelphia Convention of 1787

Numerous books and articles describe the participants and the work of the Constitutional Convention, give something of the causes that brought it about and discuss what happened in its wake, and analyze at least cursorily the ideas and issues of these events. Especially for its length (35 pages), none is better than:

Walter Berns, The Writing of the Constitution of the United States (American Enterprise Institute 1985) (Berns explains the background of events and ideas leading to the convention, analyzes the "political theory [and] political fact" that motivated the delegates, provides a chronology of the debate on key issues, and notes the resolution of the convention's most important unfinished business).

Three good, popularly oriented, book-length studies are:

Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Little, Brown 1986) (first published 1966).

Christopher Collier & James Collier, Decision in Philadelphia: The Constitutional Convention of 1787 (Random House/Reader's Digest Press 1986).

Richard B. Morris, Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution (Holt, Rinehart & Winston 1985) (looks at events through the eyes of The Federalist's authors).

What Brought the Convention About?

Three good sources dealing primarily with the events and conditions leading to the 1787 convention are below, their relative foci revealed by their titles.

Andrew C. McLaughlin, The Confederation and the Constitution, 1783-1789 (Crowell-Collier 1962) (first published 1905) (this work is currently out of print).

Robert Middlekauff, The Glorious Cause: The American Revolution, 1763-1789 (Oxford University Press 1982).

Jack N. Rakove, The Beginnings of National Politics: An Interpretive History of the Continental Congress (Johns Hopkins University Press 1982) (first published 1979).

The Ideas of the Constitution

The framers' understanding of political behavior and of the purposes of government are referenced in the works above (albeit, in some, obliquely at best). Both articles below provide more substantial explications, with reference to the political theorists of the eighteenth century and earlier times on whom the framers relied.

Martin Diamond, Democracy and The Federalist: A Reconsideration of the Framers' Intent, 53 American Political Science Review 52 (1959), reprinted in the Greene and Jones anthologies cited infra under Anthologies.

Martin Diamond, The Federalist, in Leo Strauss & Joseph Cropsey (eds.), The History of Political Philosophy (University of Chicago Press 2d ed. 1981) (first published 1963), also reprinted in the Wood anthology cited infra under Anthologies.

Another way to understand the political theories of the founding period is to see the Constitution through the eyes of its opponents. A very helpful treatment to that end is:

Herbert J. Storing, What the Anti-Federalists Were for: The Political Thought of the Opponents of the Constitution: Volume I of the Complete Anti-Federalist (University of Chicago Press 1981).

The Bill of Rights

The best one-volume treatment of the evolution and ratification of the first ten amendments to the Constitution is Robert A. Rutland, The Birth of the Bill of Rights, 1776-1791 (New England University Press rev. ed. 1983).

Original Texts

The Federalist--Hamilton, Madison, and Jay's classic exposition of the Constitution--is available in numerous editions. Any good bookstore is likely to have the paperback editions of Clinton Rossiter (New American Library 1962) and/or Garry Wills (Bantam Classic 1982).

For anti-federalist writings, the most convenient introductory collection is Herbert J. Storing (ed.), The Anti-Federalist: Writings by the Opponents of the Constitution (abridged by Murray Dry) (University of Chicago Press 1985).

Anthologies

Several anthologies of scholarly articles cover the topics above and in the process illuminate the diverse and competing academic perspectives on the creation of the Constitution. All carry one or the other of the Diamond essays cited above, except Levy's, which focuses somewhat more heavily than the others do on the controversy over the Beard thesis (i.e., to what degree was the Constitution written primarily to serve particular economic interests?). The most comprehensive yet manageable of the four is probably Wood's.

Jack P. Greene (comp.), The Reinterpretation of the American Revolution, 1763-1789 (Greenwood Press 1979) (first published 1968).

Robert F. Jones (ed.), The Formation of the Constitution (Krieger 1978).

Leonard W. Levy (ed.), Essays on the Making of the Constitution (Oxford University Press 1969) (2d ed. forthcoming 1987).

Gordon S. Wood (ed.), The Confederation and the Constitution: The Critical Issues (University Press of America 1979).

EXTENDED BIBLIOGRAPHY

Caveats and Guides

1. This bibliography is "extended" only in comparison to the preceding pages. It presents only a small portion of the literature on the founding period, with an emphasis on more recent works, from which one can work back to earlier items.

2. The sections (see the Table of Contents at p. iii) identify the main subjects of the works placed in them. For clarification, citations include subtitles as well as titles, and annotations for some especially important works or to explain works whose titles and subtitles are unhelpful or even misleading.

3. Within those sections and subsections that warrant it, works to which one might profitably turn first are set out first; those that one might wish to consult for further information are identified by the heading Other Works.

4. Each entry shows the author, title, and journal (or for books, the publisher), the date of most recent publication, and the date of first publication where different.

5. Books that are out of print are so indicated; most items in the bibliography, out of print or not, should be available in any adequate library. Some works now out of print may be republished for the bicentennial.

I. THE AMERICAN CONSTITUTION: BIBLIOGRAPHIES AND GENERAL TREATMENTS

Bibliographies

E. James Ferguson (ed.), Confederation, the Constitution, and the Early National Period, 1781-1815 (Harlan Davidson 1975).

Ronald M. Gephart (comp.), Revolutionary America, 1763-1789 (2 vols.) (Government Printing Office 1984) (esp. ch. 10) (guide to primary and secondary works in the Library of Congress).

Kermit L. Hall (comp.), A Comprehensive Bibliography of American Constitutional and Legal History (5 vols.) (Kraus Thomas International 1984).

Earlean M. McCarrick, The U.S. Constitution: A Guide to Information Sources, 4 American Government and History Information Guide Series (Gale Research Co. 1980).

Stephen M. Millett, A Selected Bibliography of American Constitutional History (Clio Books 1975) (out of print).

American Constitutional History and Development

Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (Yale University Press 1986) (first published 1962).

Mark W. Cannon & David M. O'Brien (eds.), Views from the Bench: The Judiciary and Constitutional Politics (Chatham House 1985).

Robert K. Carr, The Supreme Court and Judicial Review (Greenwood Press 1970) (first published 1942).

Jesse H. Choper, Judicial Review and the National Political Process: A Functional Reconsideration of the Role of the Supreme Court (University of Chicago Press 1980).

Congressional Research Service, The Constitution of the United States, Analysis and Interpretation, Sen. Doc. No. 92-82, 92d Cong., 2d Sess. (1973); 1980 Supplement, Sen. Doc. No. 96-64, 96th Cong., 2d Sess. (1982, the most recent supplement as this bibliography goes to press) (includes the history of the amendments' ratification and analysis of judicial interpretation of the provisions).

Archibald Cox, The Role of the Supreme Court in American Government (Oxford University Press 1976).

Lawrence M. Friedman, A History of American Law (Simon & Schuster 2d ed. 1985).

Alfred H. Kelly, Winfred A. Harbison & Herman Belz, The American Constitution: Its Origins and Development (W. W. Norton 6th ed. 1983).

Leonard W. Levy (ed.), Encyclopedia of the American Constitution (4 vols.) (Macmillan forthcoming 1986) (over 2,000 articles on major constitutional cases, figures, and concepts throughout American history).

Robert G. McCloskey, The American Supreme Court (University of Chicago Press 1960).

Andrew McLaughlin, Constitutional History of the United States (Irvington Publishers 1935) (especially for developments through Reconstruction).

Broadus Mitchell & Louise Pearson Mitchell, A Biography of the American Constitution: Its Origin, Formation, Adoption, Interpretation (Oxford University Press 2d ed. 1975).

Louis H. Pollak, The Constitution and the Supreme Court, A Documentary History (Meridian Books 1966) (out of print).

Page Smith, The Constitution: A Documentary and Narrative History (Morrow 1980).

Robert J. Steamer, The Supreme Court in Crisis: A History of Conflict (University of Massachusetts Press 1971).

Charles Warren, The Supreme Court in United States History (2 vols.) (Little, Brown 1926) (out of print).

G. Edward White, The American Judicial Tradition: Profiles of Leading American Judges (Oxford University Press 1976).

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II. ORIGINAL TEXTS AND WRITINGS

The text of the Constitution is available in most of the works cited in this section. Note also the authoritative Congressional Research Service version, cited under American Constitutional History and Development, supra p. 5.

General Collections of Documents and Other Writings

Henry Steele Commager (ed.), 1 Documents of American History (Appleton-Century-Crofts 9th ed. 1973) (out of print).

Charles S. Hyneman & Donald S. Lutz (eds.), American Political Writing During the Founding Era: 1760-1805 (Liberty Press 1983).

Philip Kurland & Ralph Lerner (eds.), The Founders' Constitution (5 vols.) (University of Chicago Press, forthcoming January 1987) (extensive collection of English and American documents of and predating the founding and constitutional periods, illustrating each provision of the Constitution and its early amendments).

Forrest McDonald & Ellen Shapiro McDonald (eds.), Confederation and Constitution, 1781-1789 (University of South Carolina Press 1968) (out of print).

Charles C. Tansill (ed.), Documents Illustrative of the Formation of the Union of the American States (S. Judd Publishers 1984) (published by GPO in 1927).

Debates in the 1787 Convention

Max Farrand, The Records of the Federal Convention of 1787 (4 vols.) (Yale University Press; first three volumes published 1911; republished with fourth volume in 1937; fifth volume forthcoming May 1987). Volumes I and II present participants' records of convention debates, most importantly Madison's "Notes." Volume III contains convention and postconvention correspondence and speeches of the framers. Volume IV presents corrections to the first three volumes, the text of the Constitution cross-referenced to entries in the four volumes, and an index. Volume V will present additional sources that have come to light since 1937.

James Madison, Notes of Debates in the Federal Convention of 1787 (introduction by Adrienne Koch) (Ohio University Press 1985).

Saul K. Padover, To Secure These Blessings (Washington Square Press 1970) (first published 1962) (out of print) (convention debates arranged according to provisions of the Constitution).

Debates in the State Ratification Conventions

Jonathan Elliot (ed.), The Debates in the Several State Conventions on the Adoption of the Federal Constitution, as Recommended by the Framers' Convention at Philadelphia in 1787 (5 vols.) (Burt Franklin 2d ed. 1974) (first published 1836) (Elliot has long been the standard source, although it will give way to the item immediately below).

John P. Kaminski & Gaspare Saladino (eds.), Documentary History of the Ratification of the Constitution and the Bill of Rights (Wisconsin State Historical Society; in progress, some volumes now available).

Pamphlets, Newspaper Essays

General

In addition to the collections cited below, those cited above under General Collections of Documents and Other Writings, supra p. 7, contain public and private writings and state documents.

The Federalist

The Federalist consists of eighty-five essays by Alexander Hamilton, James Madison, and John Jay, published serially, mainly in the New York press, and then in book form in the spring of 1788. See the items noted preliminarily at The Political Theory of The Federalist, infra p. 26, for information on authorship and analysis of The Federalist.

However these papers served their primary goal--securing New York's ratification of the Constitution--their influence on succeeding generations' understanding of the theory and objectives of the Constitution has been immense. Of the paperback editions currently available, Cooke and Fairfield provide more probing analyses in their introductions, but Rossiter's appears to be the most accessible.

Jacob E. Cooke (ed.), The Federalist (Wesleyan University Press 1982).

Roy P. Fairfield (ed.), The Federalist Papers (Johns Hopkins University Press 1981).

Clinton Rossiter (ed.), The Federalist Papers (New American Library 1961).

Garry Wills (ed.), Th_ Federalist (Bantam Classic 1982) (out of print).

Some readers may, for reasons referenced in the title, be interested in Jean Stearns, The Federalist Without Tears, A Selection of the Federalist Papers Written in Contemporary Language for the 20th Century Reader (University Press of America 1977).

Anti-Federalist Writings

There is no The Anti-Federalist to correspond to The Federalist. Several collections of anti-federalist writings are:

Herbert J. Storing (ed.), The Anti-Federalist (University of Chicago Press 1985) (drawn from the next-cited work).

Other Works

Herbert J. Storing & Murray Dry (eds.), The Complete Anti-Federalist (7 vols.) (University of Chicago Press 1982).

William Allen & Gordon Lloyd (eds.), The Essential Antifederalist (University Press of America 1986).

Cecelia Kenyon (ed.), The Antifederalists (Bobbs-Merrill 1966) (out of print).

III. WHAT HAPPENED IN 1787 AND IN THE YEARS BEFORE AND AFTER, AND WHY?

The literature that describes and/or analyzes the events of and surrounding 1787 can be categorized and sorted in many ways, none of which is entirely satisfactory because little of the literature is single-purpose. The basic distinctions in this bibliography are between works that primarily analyze or describe:

-- events (this section, which is further divided into general treatments and treatments of more specific time periods);

-- participants (section IV);

-- ideas (section V); and

-- more specialized topics (sections VI-VIII).

General Treatments

(See also relevant portions of the works cited under American Constitutional History and Development, supra p. 5.)

Anthologies

Each anthology below provides basic material on the conditions leading to the Constitution, explains something of the theory underlying it, and introduces the various academic perspectives, such as the debates over Charles Beard's 1913 thesis on the economic origins of the Constitution. Levy's work focuses more heavily than the others on the Beard thesis; the others each include one or the other of the Diamond essays referenced in the Abbreviated Bibliography at p. 2 and in The Political Theory of The Federalist, infra p. 26. The most comprehensive yet manageable of the four is probably Wood's.

Jack P. Greene (comp.), The Reinterpretation of the American Revolution, 1763-1789 (Greenwood Press 1979) (first published 1968).

Robert F. Jones (ed.), The Formation of the Constitution (Krieger 1978).

Leonard W. Levy (ed.), Essays on the Making of the Constitution (Oxford University Press 1969) (2d ed. forthcoming 1987).

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Gordon S. Wood (ed.), The Confederation and the Constitution: The Critical Issues (University Press of America 1979).

Texts

McLaughlin's one-volume history, eighty years old and predating even the Beard thesis, is a still-solid, felicitously written, and judicious interpretation of the end of the Revolution, government under the Articles, and the writing and ratification of the Constitution. Middlekauff's single but lengthy volume provides a broader sweep and contains an extensive bibliography. The narratives on the Constitution's writing and ratification, infra p. 13, provide some comment on the events leading up to and the aftermath of the Philadelphia Convention.

Andrew C. McLaughlin, The Confederation and the Constitution, 1783-1789 (Crowell-Collier 1962) (first published 1905) (out of print).

Robert Middlekauff, The Glorious Cause: The American Revolution, 1763-1789 (Oxford University Press 1982).

Other Works

William Nisbit Chambers, Political Parties in a New Nation, The American Experience, 1776-1809 (Oxford University Press 1963) (out of print).

E. James Ferguson, The American Revolution: A General History, 1763-1790 (Dorsey Press 1974) (out of print).

E. James Ferguson, The Power of the Purse: A History of American Public Finance, 1776-1790 (University of North Carolina Press 1961).

Seymour Martin Lipset, The First New Nation, The United States in Historical and Comparative Perspective (Norton 1979) (first published 1963) (sociological analysis of American nation building in light of the experiences of other Western democracies and the emerging nations of the twentieth century; see also Chambers, supra).

Forrest McDonald, E Pluribus Unum: The Formation of the American Republic, 1776-1790 (Liberty Press 1979).

Curtis P. Nettels, The Emergence of a National Economy, 1775-1815 (M. E. Sharpe 1977) (first published 1962).

Kenneth Silverman, A Cultural History of the American Revolution: Painting, Music, Literature, and the Theatre in the Colonies and the United States from the Treaty of Paris to the Inauguration of George Washington, 1763-1789 (Crowell 1976) (out of print).

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Benjamin Wright, Consensus and Continuity, 1776-1787, 38 Boston University Law Review 1 (1958) (analyzes creation of the Constitution as a product of compromise between various northern and southern interests).

Analyses of Specific Time Periods

The works cited below conform generally, but rarely precisely, to the three chronological periods in which they are placed.

What Happened in the Years Leading to 1787?

Willi Paul Adams, The First American Constitutions: Republican Ideology and the Making of the State Constitutions in the Revolutionary Era (Rita Kimber & Robert Kimber trans.) (University of North Carolina Press 1980).

Jack N. Rakove, The Beginnings of National Politics: An Interpretive History of the Continental Congress (Johns Hopkins University Press 1983) (first published 1979).

Other Works

Lance Banning, James Madison and the Nationalists, 1780-83, 40 William & Mary Quarterly 227 (1983).

Lance Banning, From Confederation to Constitution: The Revolutionary Context of the Great Convention, this Constitution, no. 6 (Spring 1985).

Lawrence Delbert Cress, Whither Columbia? Congressional Residence and the Politics of the New Nation, 1776-1787, 32 William & Mary Quarterly 581 (1975).

George Dargo, Roots of the Republic, A New Perspective on Early American Constitutionalism (Praeger 1974) (out of print).

E. James Ferguson, Political Economy, Public Liberty, and the Foundation of the Constitution, 40 William & Mary Quarterly (1983).

Merrill Jensen, The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution, 1774-1781 (University of Wisconsin Press 1963) (first published 1940).

Merrill Jensen, The New Nation: A History of the United States During the Confederation, 1781-1789 (Northeastern University Press 1981) (first published 1950).

Jackson Turner Main, Political Parties Before the Constitution (W. W. Norton 1974).

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Peter S. Onuf, The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1778 (University of Pennsylvania Press 1983) (studies conflicts over the states' western territorial holdings; a briefer treatment is Onuf, Virginia, Vermont, and the Origins of the Federal Republic, this Constitution, no. 7 (Summer 1986).

David Szatmary, Shays' Rebellion: The Making of an Agrarian Insurrection (University of Massachusetts Press 1984) (first published 1980).

The Philadelphia Convention and the Ratification Process

Narratives

Articles. Berns's brief (35 pages) pamphlet provides as good an account, for its length, as one will find. He explains the background of events and ideas that led to the convention, analyzes the considerations of "political theory [and] political fact" that motivated the delegates, provides a chronology of the debate on key issues, and notes the resolution of the convention's unfinished business. Roche, as his title suggests, tends to downplay the impact of theory and principle in the writing of the Constitution. Storing, focusing mainly on the so-called "Great Compromise," hardly ignores the strategic machinations but gives more emphasis to the framers' views of basic principles of free government as vital ingredients in shaping the Constitution.

Walter Berns, The Writing of the Constitution of the United States (American Enterprise Institute 1985).

John P. Roche, The Founding Fathers, A Reform Caucus in Action, 55 American Political Science Review 799 (1961), reprinted in Greene, in Levy, in Jones, and in Wood, all supra pp. 10-11.

Herbert J. Storing, The Federal Convention of 1787: Politics, Principles and Statesmanship, in Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding: Politics, Statesmanship, and the Constitution (Kennikat Press 1981).

Books. The books below fall more in the popular than the scholarly vein. They present biographical sketches of the framers (or at least of the leading ones), describe the tenor of the times, and provide blow-by-blow accounts of the debates. On the ratification, see infra p. 17 under The Anti-Federalists.

Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Little, Brown 1986) (first published 1966).

Christopher Collier & James Collier, Decision in Philadelphia: The Constitutional Convention of 1787 (Random House/Reader's

Digest Press 1986) (includes a lengthy but nonannotated bibliography).

Richard B. Morris, Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution (Holt, Rinehart & Winston 1985) (the convention and ratification interpreted through the eyes and actions of Publius, the author of The Federalist; includes a helpful bibliographical essay, limited however to the work of historians).

Other Works

Carl Van Doren, The Great Rehearsal: The Story of the Making and Ratifying of the Constitution of the United States (Viking Penguin 1986) (first published 1948).

Max Farrand, The Framing of the Constitution of the United States (Yale Paperbound 1962) (first published 1913).

Merrill Jensen, The Making of the American Constitution (Krieger 1979) (first published 1964).

Robert Mitchell, CQ's Guide to the U.S. Constitution: History, Text, Glossary, Index (Congressional Quarterly 1986) (relatively brief recounting written primarily for a secondary school audience).

Clinton Rossiter, 1787, The Grand Convention (Macmillan 1966) (out of print).

Charles Warren, The Making of the Constitution (Barnes & Noble 1967) (first published 1928) (out of print).

Quantitative analyses of behavior at the convention and later

Calvin C. Jillson, Constitution-Making: Alignment and Realignment in the Federal Convention of 1787, 75 American Political Science Review 598 (1981).

Calvin C. Jillson, Voting Bloc Analysis at the Constitutional Convention: Implications for an Interpretation of the Connecticut Compromise, 31 Western Political Quarterly 535 (1978).

Gerald M. Pomper, Conflict and Coalitions at the Constitutional Convention, in S. O. Groenning et al. (eds.), The Study of Coalition Behavior: Theoretical Perspectives from Four Continents (Holt, Rinehart & Winston 1970) (out of print).

William H. Riker, The Heresthetics of Constitution-Making: The Presidency in 1787, with Comments on Determinism and Rational Choice, 78 American Political Science Review 1 (1984).

Norman Risjord, Virginians and the Constitution: A Multivariate Analysis [of the Virginia ratifying convention], 31 William & Mary Quarterly 613 (1974).

Charles W. Roll, Jr., We, Some of the People: Apportionment in the Thirteen State Ratifying Conventions, 56 Journal of American History 21 (1969).

S. Sidney Ulmer, Subgroup Formation in the Constitutional Convention, 10 Midwest Journal of Political Science 288 (1966).

What Happened After Ratification?

(See also the biographical literature on such people as Hamilton, Jay, Jefferson, Madison, and Washington in section IV, and the items in sections VI and VII.)

General

Lance Banning, The Jeffersonian Persuasion: Evolution of a Party Ideology (Cornell University Press 1978).

Marcus Cunliffe, The Nation Takes Shape, 1789-1837 (University of Chicago Press 1960).

Other Works

Lance Banning, Republican Ideology and the Triumph of the Constitution, 1789 to 1793, 31 William & Mary Quarterly 167 (1974).

Richard Buel, Jr., Securing the Revolution: Ideology and American Politics, 1789-1815 (Cornell University Press 1974).

Joseph Charles, The Origins of the American Party System (Peter Smith 1961).

John C. Miller, The Federalist Era, 1789-1801 (Harper & Row 1960).

Thomas P. Slaughter, Liberty and Taxes: The Early National Contest, this Constitution, no. 7 (Spring 1985).

Leonard D. White, The Federalists, A Study in Administrative History, 1789-1801 (Greenwood Press 1978) (first published 1948) (the first of White's four-volume administrative history, The Federalists recounts the establishment and early operation of the executive and, to a lesser degree, the legislative branches).

The judiciary

For works about the federal courts and judicial activity in the last decade of the eighteenth century, see, in addition to relevant parts of the general works in section I:

David P. Currie, The Constitution in the Supreme Court, The First Hundred Years, 1789-1888 (University of Chicago Press 1985) (chs. 1 and 2).

Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic (Oxford University Press 1971).

Julius Goebel, Jr., Antecedents and Beginnings to 1800, vol. 1 of The History of the Supreme Court (Oliver Wendell Holmes Devise History of the Supreme Court of the U.S., Macmillan 1971).

Ralph Lerner, The Supreme Court as Republican Schoolmaster, 1967 Supreme Court Review 127 (analyzes the federalist teaching in the early Supreme Court justices' grand jury charges).

Richard B. Morris, John Jay: The Nation and the Court (Boston University Press 1967).

Russell Wheeler, Extrajudicial Activities of the Early Supreme Court, 1973 Supreme Court Review 123 (reinterpretation of, among other things, Hayburn's Case, 2 Dall. 409 (1792), and the 1793 advisory opinion incident).

IV. WHAT KIND OF PEOPLE WROTE, RATIFIED, OR OPPOSED THE CONSTITUTION?

Labels, and the literature to be labelled, can be especially misleading when one tries to understand who the participants in the founding were, and why they acted as they did. For example, the "federalist" label was appropriated by those who advocated basically a national government, forcing those who favored a confederacy to call themselves "anti-federalists." Also, "the founders" is used below somewhat narrowly to designate only those who took a leading role in writing the Constitution in the convention. Moreover, the literature itself is misleading to the degree it suggests that to understand why those of the founding acted as they did, it is enough to read the accounts of their backgrounds and their social and economic situation. One must also try to understand what they thought and why; the literature cited in section V is a necessary complement to that in sections III and IV.

The Founders

Robert D. Brown, The Founding Fathers of 1776 and 1787: A Collective View, 33 William & Mary Quarterly 465 (1976).

Stanley M. Elkins & Eric McKitrick, The Founding Fathers, Young Men of the Revolution, 76 Political Science Quarterly 81 (1961), reprinted in Greene, in Levy, and in Jones, all supra p. 10 (explains the federalist, anti-federalist division in terms of age and thus experience during the Revolutionary War).

The Anti-Federalists

In some ways, controversies over the role of the anti-federalists, and over the Beard thesis (see infra p. 18), are of the same piece. The Beard thesis, however, has a distinct economic focus, which sets it apart from analysis of opposition to the Constitution generally.

Jackson Turner Main, The Antifederalists: Critics of the Constitution, 1781-1788 (W. W. Norton 1974) (first published 1961).

Robert A. Rutland, The Ordeal of the Constitution: The Anti-Federalists and the Ratification Struggle of 1787-1788 (Northeastern University Press 1983).

Herbert J. Storing, What the Anti-Federalists Were for: The Political Thought of the Opponents of the Constitution: Volume

I of the Complete Anti-Federalist (University of Chicago Press 1981).

Other Works

Steven R. Boyd, The Politics of Opposition: Anti-Federalists and the Acceptance of the Constitution (KTO Press 1979) (out of print).

James Hutson, Comity, Court, and Constitution: Antifederalism and the Historians, 38 William & Mary Quarterly 337 (1981).

Cecelia Kenyon, "Men of Little Faith," The Anti-Federalists on the Nature of Representative Government, 12 William & Mary Quarterly 3 (1955), reprinted in Kenyon, supra p. 9, and in Greene, supra p. 10.

The Beard Thesis

The four anthologies at pp. 10-11, but especially Levy's, provide materials on the Beard thesis controversy.

Charles A. Beard, An Economic Interpretation of the Constitution of the United States (Free Press 1965) (first published 1913).

Lee Benson, Turner and Beard: American Historical Writing Reconsidered (pt. III on Beard) (Greenwood Press 1980) (first published 1960).

Robert E. Brown, Charles Beard and the Constitution: A Critical Analysis of An Economic Interpretation of the Constitution (Greenwood Press 1979) (first published 1956).

Staughton Lynd, Class Conflict, Slavery and the United States Constitution: Ten Essays (Greenwood Press 1980) (first published 1967).

Pope McCorkle, The Historian as Intellectual: Charles Beard and the Constitution Reconsidered, 28 American Journal of Legal History 314 (1984).

Forrest McDonald, We the People: The Economic Origins of the Constitution (University of Chicago Press 1976) (first published 1958) (effort to refute Beard's thesis using Beard's methodology; by his own account, McDonald would probably prefer readers go to his E Pluribus Unum, supra p. 11).

Robert A. McGuire & Robert L. Ohfeldt, Economic Interests and the American Constitution: A Quantitative Rehabilitation of Charles A. Beard, 44 Journal of Economic History 509 (1984).

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Biographies of Participants in the Constitution's Creation

Abridged editions of Hamilton's, Madison's, and Wilson's works are cited below, but this section does not reference the comprehensive editions of the papers of leading eighteenth century figures. For most of the prominent framers, projects have been under way for at least several years at various universities to produce complete and authoritative collections of their writings, supplanting earlier editions.

Biographical Collections

Most of the books cited at p. 13 contain brief biographical sketches of at least the prominent founders. Thumbnail sketches of most of them are also in Robert G. Ferris & James H. Charleton, The Signers of the Constitution (Interpretive Publications 1986), and, with religious overtones, M. E. Bradford, A Worthy Company: Brief Lives of the Framers of the United States Constitution (Plymouth Rock Foundation 1982).

Insightful treatments of the founding era activities and thought of Hamilton, Jefferson, Lee, Madison, Marshall, Mason, and Wilson are in Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding: Politics, Statesmanship, and the Constitution (Kennikat Press 1981).

Separate Biographical Treatments

(Delegates to the Constitutional Convention are so noted.)

John Adams (Massachusetts)

John R. Howe, Jr., The Changing Political Thought of John Adams (Princeton University Press 1966).

Gregg L. Lint & Richard Alan Ryerson, The Separation of Powers: John Adams' Influence on the Constitution, this Constitution, no. 11 (Summer 1986).

Page Smith, John Adams (2 vols.) (Greenwood Press 1970) (first published 1962).

Abraham Baldwin (Georgia) (delegate)

Henry C. White, Abraham Baldwin, One of the Founders of the Republic (McGregor 1926) (out of print).

John Blair, Jr. (Virginia) (delegate)

Fred L. Israel, John Blair, in Leon Friedman & Fred L. Israel, 1 The Justices of the United States Supreme Court 1789-1978, 109 (Chelsea House rev. ed. 1980) (first published 1969).

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William Blount (North Carolina) (delegate)

William H. Masterson, William Blount (Greenwood Press 1970) (first published 1954).

George Clinton (New York)

E. Wilder Spaulding, His Excellency, George Clinton (Friedman 1964) (first published 1938) (out of print).

William Davie (North Carolina) (delegate)

Blackwell Robinson, William R. Davie (University of North Carolina Press 1957) (out of print).

John Dickinson (Delaware) (delegate)

Milton E. Flower, John Dickinson: Conservative Revolutionary (University Press of Virginia 1983).

John H. Hutson, John Dickinson at the Federal Convention, 40 William & Mary Quarterly 256 (1983).

Oliver Ellsworth (Connecticut) (delegate)

William G. Brown, Life of Oliver Ellsworth (Da Capo 1970) (first published 1905).

Michael Kraus, Oliver Ellsworth, in Leon Friedman & Fred L. Israel, 1 The Justices of the United States Supreme Court, 1789-1978, 223 (Chelsea House rev. ed. 1980) (first published 1969).

Benjamin Franklin (Pennsylvania) (delegate)

Ronald W. Clark, Benjamin Franklin: A Biography (Random House 1983).

Esmond Wright, Franklin of Philadelphia (Harvard University Press 1986).

Elbridge Gerry (Massachusetts) (delegate)

George A. Billias, Elbridge Gerry: Founding Father and Republican Statesman (McGraw-Hill 1976) (out of print).

Alexander Hamilton (New York) (delegate)

(See also Morris, supra p. 14.)

Jacob E. Cooke, Alexander Hamilton: A Biography (Scribners 1982).

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Morton J. Frisch, Selected Writings and Speeches of Alexander Hamilton (American Enterprise Institute 1985).

Robert Hendrickson, Hamilton I 1757-1789, Hamilton II 1789-1804 (Mason/Charter Publishers 1976) (out of print).

Robert Hendrickson, The Rise and Fall of Alexander Hamilton (Dodd, Mead 1981) (single, nonfootnoted volume drawn from the two volumes cited above).

Forrest McDonald, Alexander Hamilton: A Biography (W. W. Norton 1982).

Broadus Mitchell, Alexander Hamilton: A Concise Biography (Oxford University Press 1976).

Patrick Henry (Virginia)

Jacob Axelrod, Patrick Henry, The Voice of Freedom (Random House 1947) (out of print).

John Jay (New York)

(See also Morris, supra p. 14; Morris, Wheeler, supra p. 16.)

Irving Dillard, John Jay, in Leon Friedman & Fred L. Israel, 1 The Justices of the United States Supreme Court, 1789-1978, 3 (Chelsea House rev. ed. 1980) (first published 1969).

Frank Monaghan, John Jay (AMS Reprint) (first published 1935).

Richard B. Morris, The Constitutional Thought of John Jay, this Constitution, no. 9 (Winter 1985).

Thomas Jefferson (Virginia)

Dumas Malone, Jefferson and His Times (esp. vol. 2, Thomas Jefferson and the Rights of Man) (Little, Brown 1951).

William Johnson (Connecticut) (delegate)

George C. Grace, Jr., William Samuel Johnson: A Maker of the Constitution (Columbia University Press 1937) (out of print).

Rufus King (Massachusetts) (delegate)

Robert Ernst, Rufus King: American Federalist (University of North Carolina Press 1968).

James Madison (Virginia) (delegate)

(See also Morris, supra p. 14.)

Irving Brant, James Madison (6 vols., esp. James Madison, The Nationalist, 1780-87 (Bobbs-Merrill 1948) (out of print), and James Madison, Father of the Constitution, 1787-1800 (Bobbs-Merrill 1950) (out of print)).

Ralph Ketcham, James Madison, A Biography (Macmillan 1971) (out of print).

Marvin Meyers (ed.), The Mind of the Founder: Sources of the Political Thought of James Madison (University Press of New England rev. ed. 1981) (first published 1973).

John Marshall (Virginia)

Robert Kenneth Faulkner, The Jurisprudence of John Marshall (Greenwood Press 1980) (first published 1968).

Frances N. Stites, John Marshall: Defender of the Constitution (Little, Brown 1981).

Luther Martin (Maryland) (delegate)

Paul S. Clarkson & R. Samuel Jett, Luther Martin of Maryland (Johns Hopkins University Press 1970) (out of print).

George Mason (Virginia) (delegate)

Helen Hill Miller, George Mason: Gentleman Revolutionary (University of North Carolina Press 1975).

Robert A. Rutland, George Mason: Reluctant Statesman (Louisiana State University Press 1980) (first published 1961).

Gouverneur Morris (Pennsylvania) (delegate)

Max Mintz, Gouverneur Morris and the American Revolution (University of Oklahoma Press 1970) (out of print).

Daniel Walther, Gouverneur Morris: Witness of Two Revolutions (Funk & Wagnalls 1934) (out of print).

William Paterson (New Jersey) (delegate)

John E. O'Connor, William Paterson: Lawyer and Statesman, 1745-1806 (Rutgers University Press 1979).

Charles Pinckney (South Carolina) (delegate)

Andrew J. Bethea, The Contributions of Charles Pinckney to the Formation of the American Union (Garrett & Massie 1937) (out of print).

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S. Sidney Ulmer, Charles Pinckney: Father of the Constitution?, 10 South Carolina Law Quarterly 225 (1958).

Charles Cotesworth Pinckney (South Carolina) (delegate)

Marvin R. Zahniser, Charles Cotesworth Pinckney: Founding Father (University of North Carolina Press 1967).

Edmund Randolph (Virginia) (delegate)

John J. Reardon, Edmund Randolph: A Biography (Macmillan 1974) (out of print).

John Rutledge (South Carolina) (delegate)

Richard Barry, Mr. Rutledge of South Carolina (Buell, Sloan & Pearce 1942) (out of print).

Leon Friedman, John Rutledge, in Leon Friedman & Fred L. Israel, 1 The Justices of the United States Supreme Court 1789-1978, 33 (Chelsea House rev. ed. 1980) (first published 1969).

Roger Sherman (Connecticut) (delegate)

Christopher Collier, Roger Sherman's Connecticut: Yankee Politics and the American Revolution (Wesleyan University Press 1971).

George Washington (Virginia) (delegate)

James Thomas Flexner, Washington: The Indispensable Man (Signet Paperback 1984) (first published 1974).

James Thomas Flexner, George Washington: A Biography (4 vols.) (Little, Brown 1965-72).

James Wilson (Pennsylvania) (delegate)

Robert G. McCloskey, The Works of James Wilson (2 vols.) (Belknap Press of Harvard University Press 1967) (out of print).

Robert G. McCloskey, James Wilson, in Leon Friedman & Fred L. Israel, 1 The Justices of the United States Supreme Court, 1789-1978, 79 (Chelsea House rev. ed. 1980) (first published 1969).

Charles Page Smith, James Wilson, Founding Father: 1742-1798 (Greenwood Press 1973) (first published 1956).

Geoffrey Seed, James Wilson (KTO Press 1978) (out of print).

V. THE IDEAS OF THE CONSTITUTION

After the anthologies cited immediately below, this section draws a somewhat narrow line between works analyzing the theoretical underpinnings of the Constitution generally and works that focus more precisely on the most important subject of that category, the political theory of Publius, the author of The Federalist. (The assumption here, over which reasonable people disagree, is that both the Constitution and The Federalist are characterized by internal consistency, at least on fundamental questions.)

Consult also the anthologies at p. 10 and the article-length narratives at p. 13.

Anthologies

Robert A. Goldwin & William A. Schambra (eds.), How Democratic Is the Constitution? (American Enterprise Institute 1980).

Robert A. Goldwin & William A. Schambra (eds.), How Capitalistic Is the Constitution? (American Enterprise Institute 1982).

Robert H. Horwitz (ed.), The Moral Foundations of the American Republic (University Press of Virginia 3d ed. 1985).

Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding: Politics, Statesmanship, and the Constitution (Kennikat Press 1980).

General Treatments

Bruce Ackerman, The Storrs Lectures: Discovering the Constitution, 93 Yale Law Journal 1013-1043 (1984) (lectures I and II).

Martin Diamond, The Founding of the Democratic Republic (F. E. Peacock 1981) (out of print) (this is an excellent introduction, but it is difficult to locate).

Richard Hofstader, The Founding Fathers: An Age of Realism, in The American Political Tradition and the Men Who Made It (Vintage Books 1954), also reprinted in Horwitz, supra under Anthologies (Hofstader analyzes the founders' realistic, or pessimistic, view of human nature and what they tried to do with and about it).

Andrew C. McLaughlin, Foundations of American Constitutionalism (Peter Smith 1972) (first published 1932) (analyzes the importance of the seventeenth and eighteenth century concepts of charters and contracts to the creation of the Constitution).

Herbert J. Storing, What the Antifederalists Were for: The Political Thought of the Opponents of the Constitution: Volume I of the Complete Anti-Federalist (University of Chicago Press 1981).

Gordon S. Wood, The Creation of the American Republic, 1776-1787 (W. W. Norton 1972) (first published 1969) (exhaustive and monumental social and intellectual history of the evolution of the new American political theory).

Other Works

Frank M. Coleman, Hobbes and America: Exploring the Constitutional Foundations (University of Toronto Press 1977).

Edward S. Corwin, The Higher Law Background of American Constitutional Law (Cornell University Press 1955).

William Winslow Crosskey, I & II Politics and the Constitution in the History of the United States (University of Chicago Press 1953); William Winslow Crosskey & William Jeffrey, Jr., III The Political Background of the Federal Constitution (University of Chicago Press 1980). All three volumes are characterized by their steadfast analysis of the eighteenth century meaning of words used in the Constitution and debates about it, especially as to national economic power and the role of the Supreme Court. Although the first two volumes were not published until 1953, they provide exhaustive but rebuttable support for the New Deal constitutional world view.

Martin Diamond, The Declaration and the Constitution: Liberty, Democracy, and the Founders, Public Interest 41 (1975), reprinted in Gary L. McDowell (ed.), Taking the Constitution Seriously: Essays on the Constitution and Constitutional Law (Kendall-Hunt 1981).

John Patrick Diggins, The Lost Soul of American Politics: Virtue, Self-interest, and the Foundations of Liberalism (Basic Books 1984) (esp. chs. 1-6).

Paul Eidelberg, The Philosophy of the American Constitution: A Reinterpretation of the Intentions of the Founding Fathers (University Press of America 1986) (first published 1968) (argues, contrary to Diamond, supra and infra, that the Constitution creates a mixed, not a democratic, regime).

Robert H. Horwitz, John Locke and the Preservation of Liberty: A Perennial Problem of Civic Education, in Horwitz, supra p. 24.

Merrill Jensen, The Idea of a National Government During the American Revolution, 58 Political Science Quarterly 356 (1943), reprinted in Levy, supra p. 10.

Martin Landau, A Self-Correcting System: The Constitution of the United States, this Constitution, no. 11 (Summer 1986).

Ralph Lerner, Commerce and Character: The Anglo-American as New-Model Man, 36 William & Mary Quarterly 3 (1979).

Donald S. Lutz, Popular Consent and Popular Control: Whig Political Theory in the Early State Constitutions (Louisiana State University Press 1980).

Forrest McDonald, Novus Ordo Seclorum: The Intellectual Origins of the Constitution (University of Kansas Press 1985).

Rozann Rothman, The Impact of Covenant and Contract Theories on Conceptions of the U.S. Constitution, 10 Publius 149 (1980).

David G. Smith, The Convention and the Constitution: The Political Ideas of the Founding Fathers (St. Martin's Press 1965) (out of print) (brief (92-page) but instructive account of the framers' political theories and their backgrounds).

Martha Ziskind, Judicial Tenure and the American Constitution: English and American Precedents, 1965 Supreme Court Review 135.

The Political Theory of The Federalist

Those who plan to read deeply into The Federalist should know about The Federalist Concordance, edited by Thomas S. Engeman, Edward J. Erler & Thomas B. Hofeller (Wesleyan University Press 1980) (out of print). Analyses of whether Hamilton or Madison wrote certain of the papers is in Douglass Adair, The Authorship of the Disputed Federalist Papers, 1 William & Mary Quarterly 97 (part I) and 235 (part II) (1944), reprinted in Douglass Adair, Fame and the Founding Fathers (W. W. Norton 1974). Adair's conclusions are generally borne out by the quantitative analysis reported in Frederick Mosteller & David L. Wallace, Inference and Disputed Authorship: The Federalist (Addison-Wesley 1964) (out of print).

Some readers may also want to refer to James G. Wilson, The Most Sacred Text: The Supreme Court's Use of The Federalist Papers, 1985 Brigham Young University Law Review 65, for the analysis of the topic referenced in its title.

Either one of the first two following essays provides a rich, and to many a fresh, explanation of the political goals of the Constitution--an extended, commercial, representative democracy with auxiliary checks--and of the theoretical under-

standing that motivated its leading authors and that Hamilton and Madison explained in The Federalist.

Martin Diamond, The Federalist, in Leo Strauss & Joseph Cropsey (eds.), The History of Political Philosophy (University of Chicago Press 2d ed. 1981) (first published 1963), also reprinted in Wood, supra p. 11.

Martin Diamond, Democracy and The Federalist: A Reconsideration of the Framers' Intent, 53 American Political Science Review 52 (1959), reprinted in Greene and in Jones, supra p. 10.

Other Works

Douglass Adair, The Tenth Federalist Revisited, 8 William & Mary Quarterly 48 (1951), reprinted in Douglass Adair, Fame and the Founding Fathers (W. W. Norton 1974).

Douglass Adair, That Politics May Be Reduced to Science: David Hume, James Madison, and the Tenth Federalist (1957), reprinted in Greene, supra p. 10, and in Adair, immediately supra.

George W. Carey, Separation of Powers and the Madison Model, A Reply to the Critics, 72 American Political Science Review 151 (1978).

Robert A. Dahl, A Preface to Democratic Theory (University of Chicago Press 1963) (first published 1956) (empirically based, theoretical effort to refute, inter alia, the theory of The Federalist no. 10).

Thomas S. Engeman, Utopianism and Preservation, The Rhetorical Dimension of American Statesmanship, in Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding: Politics, Statesmanship, and the Constitution (Kennikat Press 1981) (arguing that the federalists' downfall was caused by their preoccupation with the structure of government and channelling human nature to drive that structure, with only a secondary concern for the higher goals of political society).

David F. Epstein, The Political Theory of the Federalist (University of Chicago Press 1984).

Albert Furtwangler, The Authority of Publius: A Reading of the Federalist Papers (Cornell University Press 1984) (analyzes literary strategies, rhetoric, and form in The Federalist).

Charles F. Hobson, The Negative on State Laws: James Madison and the Crisis of Republican Government, 36 William & Mary Quarterly 215 (1979).

Arthur O. Lovejoy, The Theory of Human Nature in the American

Constitution and the Method of Counterpoise (1961), reprinted in Greene, supra p. 10.

Robert J. Morgan, Madison's Analysis of the Sources of Political Authority, 75 American Political Science Review 613 (1981).

Jack N. Rakove, James Madison and the Extended Republic: Theory and Practice in American Politics, this Constitution, no. 3 (Summer 1984).

Ralph A. Rossum, The Future of the American Commercial Republic, in Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding: Politics, Statesmanship, and the Constitution (Kennikat Press 1981).

Judith H. Shklar, Publius and the Science of the Past, 83 Yale Law Journal 1286 (1977).

Garry Wills, Explaining America: The Federalist (1981).

Jean Yarborough, Thoughts on The Federalist's View of Representation, Polity 12 (1979).

Contemporary Adjudication and the Intentions of the Framers

There is a great deal of legal academic literature on determining what kind of deference, if any, courts owe to the intentions of the Constitution's framers. That literature is basically beyond the scope of this bibliography: Many of the works (not unexpectedly, given their assumptions) pay little attention to the writing of the Constitution. A sampling, though, of some of the leading articles is below.

Popular interest in this subject was spurred by various comments of Attorney General Meese and Justice Brennan in 1985. The U.C. Davis Law Review has published one each of their speeches, and one by Justice Stevens, as Addresses--Construing the Constitution, 19 U.C. Davis Law Review 2 (1985).

Paul Brest, The Misconceived Quest for the Original Understanding, 60 Boston University Law Review 204 (1980).

Donald O. Dewey, James Madison Helps Clio Interpret the Constitution, 15 American Journal of Legal History 38 (1971).

Henry Monaghan, Our Perfect Constitution, 56 New York University Law Review 353 (1981) (and see other articles in this symposium on "Constitutional Adjudication and Democratic Theory" at 259).

H. Jefferson Powell, The Original Understanding of Original Intent, 98 Harvard Law Review 885 (1985).

William Rehnquist, The Notion of a Living Constitution, 54 Texas Law Review 693 (1976), reprinted in Mark W. Cannon & David O'Brien (eds.), Views from the Bench: The Judiciary and Constitutional Politics (Chatham House 1985) (and see other articles appearing there in pt. III, The Judiciary and the Constitution).

Terrance Sandalow, Constitutional Interpretation, 79 Michigan Law Review 1033 (1981).

Larry Simon, The Authority of the Constitution and Its Meaning: A Preface to a Theory of Constitutional Interpretation, 58 Southern California Law Review 603 (1985) (and see other articles and comments in this symposium on constitutional interpretation, starting at 551).

J. Clifford Wallace, A Two Hundred Year Old Constitution in Modern Society, 61 Texas Law Review 1575 (1983).

VI. SPECIALIZED TREATMENTS OF STRUCTURAL COMPONENTS

This section presents analyses of founding period treatment of major structural constitutional components--federalism and the three great departments of government.

Federalism

Walter Berns, The Meaning of the Tenth Amendment, in Robert Goldwin (ed.), A Nation of States: Essays on the American Federal System (Rand-McNally 2d ed. 1971).

Martin Diamond, The Federalist on Federalism: "Neither a National nor a Federal Constitution, but a Composition of Both," 86 Yale Law Journal 1273 (1977).

Both are reprinted in Gary L. McDowell (ed.), Taking the Constitution Seriously: Essays on the Constitution and Constitutional Law (Kendall-Hunt 1981).

Other Works

William W. Van Alstyne, The Second Death of Federalism, 83 Michigan Law Review 1709 (1985) (analysis and reconstruction of 1787 debates in light of Garcia v. San Antonio Metropolitan Transit Authority, 105 S. Ct. 1005 (1985)).

Robert H. Birkby, Politics of Accommodation: The Origin of the Supremacy Clause, 19 Western Political Quarterly 123 (1966).

S. Rufus Davis, The Federal Principle: A Journey Through Time in Quest of Meaning (University of California Press 1978) (esp. chs. 4-5).

Martin Diamond, What the Framers Meant by Federalism, in Robert M. Goldwin (ed.), A Nation of States (Rand-McNally 2d ed. 1971).

Gottfried Dietze, The Federalist: A Classic on Federalism and Free Government (Johns Hopkins University Press 1960).

Daniel Elazar, Federalism, in 5 International Encyclopedia of the Social Sciences (David Sills ed.) (Macmillan 1968).

Jack P. Greene, The Imperial Roots of American Federalism, this Constitution, no. 6 (Spring 1985).

Charles F. Hobson, The Negative on State Laws: James Madison, the Constitution, and the Crisis of Republican Government, 26 William & Mary Quarterly 215 (1979).

Alpheus T. Mason, The States Rights Debate: Anti-Federalism and the Constitution (Oxford University Press 2d ed. 1972) (first published 1964).

William P. Murphy, The Triumph of Nationalism: State Sovereignty, the Founding Fathers, and the Making of the Constitution (University of Chicago Press 1967) (out of print).

Note, The Rule of Law and the States: A New Interpretation of the Guarantee Clause, 93 Yale Law Journal (1984).

Vincent Ostrom, The Political Theory of a Compound Republic (Virginia Polytechnic Institute & State University Press 1971) (out of print).

Maurice J. Vile, The Structure of American Federalism (Oxford University Press 1961) (out of print).

Separation of Powers

The Congress and the Presidency

Donald G. Morgan, Congress and the Constitution: A Study of Responsibility (Belknap Press of Harvard University Press 1966) (available from Books on Demand) (esp. parts I and II analyzing the early Congress).

Paul Peterson, Separation of Powers and Checks and Balances: The Delicate Balance Between Republican Liberty and Power, reprinted in Gary L. McDowell (ed.), Taking the Constitution Seriously: Essays on the Constitution and Constitutional Law (Kendall-Hunt 1981).

John A. Rohr, To Run a Constitution: The Legitimacy of the Administrative State (University of Kansas Press 1986) (analyzes three "foundings" of the federal bureaucracy; part I--on the founding of the Republic--analyzes the compatibility of the administrative state with the intentions of the framers).

Charles C. Thach, Jr., The Creation of the Presidency, 1775-89 (Johns Hopkins University Press 1969) (first published 1923) (available from Books on Demand).

Other Works

Sotirios A. Barber, The Constitution and the Delegation of Congressional Power (University of Chicago Press 1975).

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Joseph M. Bessette & Jeffrey Tulis (eds.), The Presidency in the Constitutional Order (Louisiana State University Press 1981).

James W. Ceaser, Presidential Selection: Theory and Development (Princeton University Press 1979).

Bernard Donahue & Marshall Smelser, The Congressional Power to Raise Armies: The Constitutional and Ratifying Conventions, 33 Review of Politics 202 (1971).

Louis Fisher, Constitutional Conflicts Between Congress and the President (Princeton University Press rev. ed. 1985).

John L. Fitzgerald, Congress and the Separation of Powers (Praeger 1985) (esp. ch. 3).

William B. Gwyn, The Meaning of the Separation of Powers (Tulane University Press 1965).

Joseph P. Harris, The Advice and Consent of the Senate: A Study of the Confirmation and Appointments by the United States Senate (Greenwood Press 1968) (first published 1953) (esp. ch. 2).

Christopher H. Pyle & Richard M. Pious, The President, Congress, and the Constitution: Power and Legitimacy in American Politics (Free Press 1984).

Maurice J. Vile, Constitutionalism and the Separation of Powers (Clarendon Press 1967).

The Judiciary and Federal Jurisdiction

Akhil Reed Amar, A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction, 65 Boston University Law Review 205 (1985).

William R. Casto, The First Congress's Understanding of Its Authority over the Federal Courts' Jurisdiction, 26 Boston College Law Review 1101 (1985).

Robert Clinton, A Mandatory View of Federal Court Jurisdiction: A Guided Quest for the Original Understanding of Article III, 132 University of Pennsylvania Law Review 741 (1984).

Theodore Eisenberg, Congressional Authority to Restrict Lower Federal Court Jurisdiction, 83 Yale Law Journal 498 (1974).

Henry Friendly, The Historic Basis of Diversity Jurisdiction, 41 Harvard Law Review 483 (1928).

Stewart Jay, Origins of Federal Common Law, 133 University of Pennsylvania Law Review 1003 (part I), 1231 (part II) (1985).

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James E. Radcliffe, The Case or Controversy Provision (Pennsylvania State University Press 1978).

Martin H. Redish & Curtis E. Woods, Congressional Power to Control the Jurisdiction of Lower Federal Courts: A Critical Review and a New Synthesis, 124 University of Pennsylvania Law Review 45 (1975).

VII. CIVIL RIGHTS AND CIVIL LIBERTIES

Liberties in the 1787 Constitution and the Bill of Rights

Robert A. Goldwin & William A. Schambra (eds.), How Does the Constitution Secure Rights? (American Enterprise Institute 1985).

Robert A. Rutland, The Birth of the Bill of Rights, 1776-1791, (New England University Press rev. ed. 1983).

Herbert Storing, The Constitution and the Bill of Rights, in M. Judd Herman (ed.), Essays on the Constitution of the United States (Kennikat Press 1978); also reprinted in Gary L. McDowell (ed.), Taking the Constitution Seriously: Essays on the Constitution and Constitutional Law (Kendall-Hunt 1981), and Ralph A. Rossum & Gary L. McDowell (eds.), The American Founding, Politics, Statesmanship, and the Constitution (Kennikat Press 1981).

Other Works

Chester J. Antineau, Rights of Our Fathers (Coiner Publications 1968) (out of print).

Walter Berns, Freedom of the Press and the Alien and Sedition Laws: A Reappraisal, 1970 Supreme Court Review 109.

Walter Berns, Religion and the Founding Principle, in Horwitz, supra p. 24.

Irving Brant, The Bill of Rights: Its Origin and Meaning (New American Library 1967) (out of print) (first published 1965).

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CHRONOLOGY OF THE FOUNDING PERIOD

July 1776	Continental Congress declares colonies' independence from Great Britain.
	Articles of Confederation presented to the Congress for consideration.
November 1777	Congress presents the Articles to the states; unanimous ratification required.
March 1781	Maryland ratifies, thus putting Articles into effect.
September 1783	Britain signs Articles of Peace.
March 1785	Washington is host to commissioners from Virginia and Maryland at Mount Vernon to resolve jurisdictional problems over Potomac River navigational rights.
September 1786	Five of the thirteen states invited by Virginia attend the Annapolis Convention on interstate commercial problems. They resolve to ask all the states to convene in Philadelphia to consider changes necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union."
February 1787	Shays's Rebellion in Massachusetts quelled.
	Congress opines favorably on the expediency of the Philadelphia Convention, called for in Annapolis, but only to revise the Articles of Confederation.
May 1787	Philadelphia Convention achieves a quorum and begins deliberations; twelve of the thirteen states are represented.
July 1787	Congress adopts the Northwest Ordinance, banning slavery and specifying procedures for establishing republican government in western territories ceded by the states.

September 1787	Delegates vote approval of the Constitution, sign it, and send it to Congress. Congress resolves to submit the Constitution for ratification as prescribed in Article VII of the document.
October 1787	The Federalist no. 1 published in New York to urge ratification there.
December 1787	Delaware becomes the first state to ratify.
June 1788	New Hampshire becomes the ninth state to ratify, the technical minimum required for adoption.
	Virginia ratifies.
July 1788	New York ratifies.
	Congress prepares for the change in government.
February 1789	Presidential electors, elected in January, choose Washington as the first president.
March 1789	Congress convenes under the Constitution.
April 1789	Washington inaugurated as president.
September 1789	Federal Judiciary Act passed.
	Congress submits twelve amendments to the states in response to calls by state ratification convention for a bill of rights.
February 1790	Supreme Court convenes for initial session.
December 1791	Virginia ratifies ten of the twelve amendments submitted, making the Bill of Rights part of the Constitution.

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